

Guides) in order to arrive at his impairment rating. Respondent and its insurance carrier conclude their doctor's 7 percent functional impairment rating should be adopted.

Conversely, claimant argues his doctor has more experience utilizing the Fourth Edition of the AMA Guides in order to evaluate impairment and his 25 percent functional impairment rating should be adopted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

It is undisputed claimant suffered a scheduled injury to his left lower extremity arising out of and in the course of his employment on January 20, 2000. Claimant stepped on a conveyor wheel and injured his left ankle. X-rays revealed an acute transverse fracture to the distal aspect of the medial malleolus.

Claimant was treated with a CAM walker followed by a cast. Claimant returned to work but had persistent ankle complaints and was referred to Greg Horton, M.D., on June 29, 2000. Dr. Horton initially diagnosed a chronic ankle sprain but after reviewing an MRI scan of claimant's left ankle the doctor suspected lateral ligamentous instability.

On January 6, 2001, Dr. Horton performed an arthroscopy on claimant's left ankle. Dr. Horton testified that he performed an arthroscopy evaluation to examine the ankle cartilage to determine whether there were any injuries not visible on the x-ray or MRI scan. The arthroscopy did not reveal any pathology of significance on the inside of claimant's ankle joint. Dr. Horton then performed an open surgical procedure to reconstruct and tighten up the ankle ligaments.

After the surgery, claimant underwent a physical therapy program. Dr. Horton released the claimant on April 30, 2001, and did not impose any specific restrictions with regard to claimant's left ankle. Claimant returned to work for a week or two and performed his regular duties of unloading and loading trucks. Claimant then suffered a back injury, had surgery and is off work.

Claimant testified that because of his left ankle injury he currently has problems walking on uneven ground, going up and down stairs, pushing on clutches or brakes, bending his ankle backwards, and wearing his work boot causes sharp pain in his ankle. He further notes numbness in his toes and a grinding sensation in the front part of his ankle.

Dr. Horton opined the surgery was successful based on a return of functional stability. Dr. Horton concluded the claimant didn't have too much pain or swelling; the ankle was stable; the grinding had improved; and claimant had made great gains.

On September 1, 2001, Dr. Horton, without further examination and based upon his medical records, provided a functional impairment rating. Based on the AMA Guides, Fourth Edition, Dr. Horton estimated claimant's permanent impairment to be 7 percent at the level of the foot and ankle. Dr. Horton testified the 7 percent to the foot would convert to a 5 percent to the lower extremity. In calculating the impairment rating, Dr. Horton used table 64 found on page 3/86 of the AMA Guides.

At the request of claimant's attorney, Sergio Delgado, M.D., examined and rated the claimant on June 20, 2001. Upon physical examination, Dr. Delgado found decreased sensation and numbness in the area supplied by the sural nerve which is consistent with the surgical procedure performed on the claimant's ankle. Dr. Delgado used a goniometer to determine the degrees of motion in the claimant's ankle and compared them to the uninjured ankle. Dr. Delgado also tested the claimant's ankle for instability and found some instability in the ankle. Dr. Delgado reviewed the stress x-rays taken of claimant's ankle which revealed a 5 millimeter widening on the left which was not found on the right.

Dr. Delgado rated the claimant's left lower extremity at 14 percent for loss of plantar flexion and extension of the left ankle as compared to the right; 10 percent for persistent and objectively measured instability of the left ankle; and, 2 percent for the sural sensory deficit involving the left lateral foot which combine for a 25 percent left lower extremity impairment.

K.S.A. 44-510d(a)(23) provides:

Loss of a scheduled member shall be based upon permanent impairment of function to the scheduled member as determined using the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein.

Respondent argues Dr. Delgado incorrectly utilized the AMA Guides because he combined a rating based upon physical examination with a rating based upon the diagnosis based estimate. Although the AMA Guides do contain language that the evaluating physician should decide which estimate best describes the situation and should use only one approach for each anatomic part, the AMA Guides in the next paragraph further recognize there may be instances in which elements from both a diagnostic and examination approach will apply to a specific situation (p. 84).

Both Drs. Delgado and Horton expressed opinions on claimant's permanent functional impairment as a result of the January 20, 2000, accident. Both doctors utilized the AMA Guides in determining claimant's functional impairment rating. The Administrative Law Judge gave equal weight to both ratings.

The AMA Guides, Fourth Edition, emphasizes that impairment percentages arrived at by using the AMA Guides' criteria represent estimates rather than precise determinations (p. v). Factors that go into estimating the degree of the patient's impairment are the physician's judgement, experience, training, skill, and the thoroughness in examining the patient and applying those findings to the AMA Guides' criteria. Other considerations and

variables also apply such as the interpretation of laboratory tests and clinical procedures (p. 3).

The Board finds that both of these physicians, under the circumstances and facts of this case, simply disagree as to the interpretation and application of the AMA Guides in determining claimant's permanent functional impairment rating. Both physicians utilized the AMA Guides in determining claimant's permanent functional impairment as required by statute. The Board finds that neither physician misapplied or misinterpreted the AMA Guides to a point that their opinions should be disregarded. These two physicians simply disagreed not only as to the interpretation as to how the AMA Guides should be applied in different circumstances but they also made different physical findings in regards to claimant's permanent condition as a result of his injuries.

The Board, therefore, concludes that both testifying physician's functional impairment ratings should be given equal weight in determining the appropriate impairment of function for claimant's left lower extremity. Accordingly, for claimant's January 20, 2000, accident date, the claimant has a 15 percent permanent impairment to the left lower extremity.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Julie A.N. Sample dated February 28, 2002, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of September 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Gary L. Jordan, Attorney for Claimant
Michael R. Kauphusman, Attorney for Respondent
Julie A.N. Sample, Administrative Law Judge
Director, Division of Workers Compensation